Supreme Court, U.S.
FILED

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

RUBY BRADLEY CRANFORD
Petitioner

V.

UNITED STATES OF AMERICA

On Petition For Writ of Certiorari
To The U.S. Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether there was sufficient evidence of each essential element of mail fraud from which a rational trier of fact could find guilt beyond a reasonable doubt as required by the Fifth and Sixth Amendment requirements of due process of law and a fair trial.

2. Whether the trial court erred by refusing to consider a downward departure at sentencing based upon a record of six prior misdemeanor convictions.

PARTIES TO THIS PROCEEDING

All parties are as listed in the styling.

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CITATION OF OFFICIAL REPORT OF OPINION

Slip Op, U.S. Court of Appeals for the Sixth Circuit, No. 98-5829 (9/17/99) (Not designated for publication.)

Judgment in criminal case, United States District Court, W.D. Tenn. Entered June 17, 1998.

STATEMENT OF JURISDICTION OF THIS COURT

A. Date of Judgment or order sought to be reviewed: 9/17/99

B. Order on rehearing: None

C. Reliance on Rule 12.5: None

D. Statutory Basis for Writ of Certiorari: 28 USC Section 1254

E. Special Notifications Under Rule 29: Not applicable.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THIS CASE:

See Appendix.

STATEMENT OF THE CASE

Petitioner herein was found guilty on 59 counts in connection with her work as a sponsor for family day care home providers' participation in the U.S. Department of Agriculture's Child and Adult Care Food Program. The said program was administered by the Tennessee Departmet of Human Services. Counts 1 through 34 of the indictment were for mail fraud in violation of 18 USC Sections 1341. Counts 35-37 were for making false statements, 18 U.S.C. Sections 1001 and 1002. Counts 38-56 were for money laundering under 18 USC Section 1956(a)(1)(B)(i) and money laundering under 18 USC Section 1956(a)(1)(i).

The counts were grouped, and the highest offense level was found in U.S.S.G. § 2S1.1, Money Laundering. The base offense level was 23, and Ms. Cranford received a one level specific offense characteristic increase because the value of the funds exceeded $100,000 but not $200,000, U.S.S.G.§2S1.1 (b)(2)(B).She was given a two level increase for obstruction of justice, U.S.S.G. §3C1.1 for a total offense level of 26. She was not given the acceptance of responsibility adjustment under U.S.S.G.§3E1.1. Ms. Cranford's criminal history was evaluated at 10, placing her in criminal history category V. Her guideline range was 110 to 137 months and she was ultimately sentenced to 110 months.

At trial the government presented testimony of 27 witnesses. All of them had contact with the Defendant through Child

Care Nutrition Inc. (CCNI) an entity of which she was the director. She was found to have received inflated payments for the number of children she actually had. She was also found to have misrepresented her contacts with would-be providers and to have signed several persons who did not agree to be signed up in the program.

From time to time Petitioner had to make written reports to the Tennessee Department of Human Services in Nashville. In the course of the testimony the government put on a witness from the Tennessee DHS who said that claims were routinely sent by U.S. mail and that she had opened some claims herself when the mailroom was short staffed. There was also testimony that reimbursement for postage had been sought by Petitioner. However, there was no evidence, either circumstantial or direct, showing a nexus to Petitioner or that Petitioner had, in fact, mailed the offending documents.

Proper motions for directed verdict were made, alleging *inter alia*, that the Government had failed to prove the material element of mailing as to the mail fraud counts.

At sentencing the trial court was asked to consider a downward departure from the high criminal history category in this case that was generated by the presence of six (6) misdemeanor convictions. Counsel also argued that there was no violence, force, weapons or physical harm in her offenses. The Court refused to consider such relief.

It is to address these remaining questions that this Petition is brought.

ARGUMENT

I. THE GOVERNMENT FAILED TO PROVE THE MATERIAL ELEMENT OF MAILING IN ITS MAIL FRAUD CASE BEYOND A REASONABLE DOUBT

The due process of law provisions of the Fifth Amendment of the constitution, along with the Sixth Amendment requirement of a fair trial make it imperative that the Government be held to proof beyond a reasonable doubt when it seeks to convict a citizen of a crime. Jackson v. Virginia, 443 US 307 (1979). Glasser v. United States, 315 U.S. 60, 80 (1942); This Court's review should be independent of the jury's determination that evidence on another count was insufficient. The Government must convince the jury with its proof, but it must also satisfy this court that given the proof adduced at trial, the jury could rationally have reached a verdict of guilt beyond a reasonable doubt. See also In Re: Winship, 397 U.S. 358 (1970); Mullaney v. Wilbur, 421 U.S. 684 (1975); Patterson v. New York, 432 U.S. 197 (1977) As the Government did not so prove its case, the rights of Petitioner under the said provisions has been violated.

Under 18 USC§-1341, the government must prove both the existence of a scheme to defraud and the use of the United States mails to carry out such a scheme. In the instant case, there was no evidence, beyond the merest scintilla, that addressed the second point.

An employee of the Tennessee DHS noted that the type of forms involved, that Petitioner had submitted, were normally--but not invariably--received by mail. There was some evidence that reimbursement for postage had been sought, but no showing of how that money had been used. Conceivably, this could have been another false claim chargable as such if true, but it does not prove the material element of mailing. Finally, there was testimony that it appeared that the dates on the documents and their arrival in the DHS offices corresponded roughly to the mail delivery time between Memphis and Nashville.

The Government at no time produced any logs of the mail room of the Tennessee DHS, which the claims processor who had noted the receipt of similar mail, averred did, in fact exist. (Transcript page 236). Although circumstantial evidence may be utilized to support a conviction of mail fraud where, for example, a policy of requiring mailing was shown to be in effect, nothing of the kind was ever shown in this case. United States v. Griffith, 17 F3d 865 (6th Cir 1994)

Jackson supra and its progeny require that proof, on the record taken as a whole, be such that a rational finder of fact could convict without resort to speculation or flights of conjecture. The slap-dash proof offered by the Government as to the issue of mailing simply did not clear this hurdle and, as such, the Due Process rights of Petitioner were abridged.

Indeed, Petitioner was effectively required to prove lack of mailing. Such

reduction of the burden of proof as to any fact necessary to the proof of the crime is an unconstitutional invasion of the rights of the criminal Defendant. See Mullaney supra; Patterson supra. A presumption of mailing was, in effect, created. This is improper. Mullaney supra Cool v. United States, 409 U.S. 100 (1972)

For each of these reasons, the case should be reversed and remanded.

II. BY REFUSAL TO CONSIDER A DOWNWARD DEPARTURE PETITIONER WAS ROBBED OF FUNDAMENTAL FAIRNESS AND DUE PROCESS OF LAW AND WAS PUSHED INTO AN INAPPROPRIATELY HIGH CRIMINAL HISTORY CATEGORY ON THE SENTENCING GRID

At sentencing, Petitioner's attorney asked the court to take into consideration the fact that his client fell into the Category V of the Sentencing Guidelines table because of six misdemeanor convicts, of which three were driving under the influence of alcohol. The argument was made that ". . .the amount of weight and the amount of impact of those points severely impacted Ms. Cranford when you get to the chart" (Sentencing hearing transcript, page 7.)

The sentencing court responded that it would never minimize the seriousness of DUI but noted that the sentencing profile of Petitioner was not what would ordinarily be expected under a criminal history of Category V. The Court noted this category had far more serious offenders than Petitioner in it. However, the Court found the criminal history accurately calculated

and refused to consider a downward departure.

As in the case of United States v. Monk, 15 F3d 15 (2d Cir 1994), the sentencing judge failed to appreciate its authority under 18 USC §3553(b). Where, as here, there are circumstances, "of a kind or to a degree not adequately taken into consideration by the Sentencing Commission" the Court should depart from the predicted sentence and make such adjustments as are needed. 18 USC 3353, subsection (b). The Commission itself has noted that there can be a limited allowance made for the totality of circumstances:

> "The Commission does not foreclose the possibility of an extraordinary case that, because of a combination of such characteristics or circumstances, differs significantly from the 'heartland' cases covered by the guidelines in a way that is important to the statutory purposes of sentencing, even though none of the characteristics or circumstances individually distinguishes the case. However, the Commission believes that such cases will be extremely rare."
> Commentary, USSG §5K2.0 (11/1/94)

The factors that take this case out of the "heartland" were that Petitioner's six misdemeanor convictions, including three DUI convictions, pushed her up to a criminal history Category V; the non-violent, non-drug offense nature of her instant offense; the court's observation that her criminal history was not typical of the defendants she sees with a criminal

history of five; and the fact that Petitioner had a full-time position with the Memphis schools. (Sentencing transcript page 23.) The end result was an overly harsh, unjust punishment that does not fit the statutory requirement of proportional punishment to the crime committed. This Court has noted many times that any factor may be considered as a potential basis for downward departure unless explicitly forbidden by the Sentencing Commission. Koon v. United States, ___ U.S. ___, 116 S.Ct. 2035, 2051 (1996).

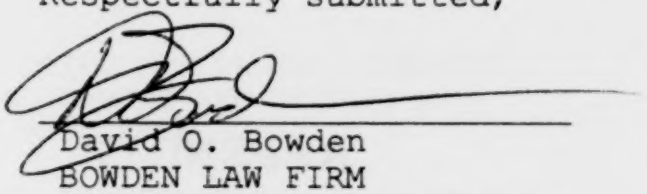
The essential requisites of Due Process of law include the individualized consideration of the claims of a party by an unbiased finder of fact. Cf. Goldberg v. Kelly, 397 U.S. 254 (1970) While it is clear that a misdemeanor DUI may be utilized to enhance the criminal history of a particular Defendant (Nichols v. United States, 511 U.S. 738 (1994), there is no requirement that it be so used. Nichols is clearly distinguishable in that Defendant therein was involved in a conspiracy to sell controlled substances. The non-violent, relatively low dangerousness of the offenses for which Petitioner was convicted give rise to a different calculus--one that was not made by the trial court. There is no lower limit on departure that is not statutory. United States v. Snelling, 961 F2d 93 (6th Cir. 1992); United States v. Baker, 4 f3d 622 (8th Cir 1993); United States v. Pippin, 903 F2d 1478 (11th Cir 1990) United States v. Wilson, 896 F2d 856 (4th Cir. 1990). And, if there be no lower limit, then consideration of anything less that the

full range of sentencing violates the Due Process/ fundamental fairness guarantees of the Fifth Amendment.

CONCLUSION

For each of the foregoing reasons, this Court should grant a Writ of Certiorari and allow this matter to be briefed and argued before it.

Respectfully submitted,



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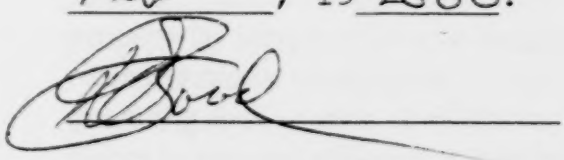
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the person(s) listed below by placing a copy of the same in the United States Mail, postage prepaid, or by such other service as may be indicated hereinbelow.

Veronica Coleman, United States Attorney, 1026 Federal Office Building, Memphis, Tenn 38103.

Dated this 16th day of Feb, ~~19~~ 2000.



APPENDIX

APPENDIX A

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THIS CASE:

UNITED STATES CONSTITUTION, AMENDMENT V.

No person shall. . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

UNITED STATES CONSTITUTION, AMENDMENT VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed . . .

18 USC Sec. 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . .for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such

carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

APPENDIX B

No. 98-5829

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES
OF AMERICA PLAINTIFF--APPELLEE

V.

RUBY BRADLEY
CRANFORD DEFENDANT--APPELLANT

On Appeal from the United States District Court for the Western District of Tennessee. **(Not designated for publication)**

Before: Nelson and Moore, Circuit Judges, and Rosen, District Judge (Sitting by Designation)

Per Curiam

A criminal defendant, convicted of numerous counts of mail fraud and sentenced to imprisonment for a term of 110 months, here appeals her conviction and sentence. We shall affirm the judgment in all aspects.

I.

The Defendant, Ruby Bradley Cranford, operated Child Care Nutrition, Inc. , a purported not-for-profit corporation. Child Care Nutrition assisted Tennessee home day care providers in obtaining

reimbursement for meals and snacks provided to children in the providers' care. The reimbursement program was funded by the United States Department of Agriculture and was administered by the State of Tennessee Department of Human Services.

The Department of Human Services worked through sponsoring organizations, of which Child Care Nutrition was one. The sponsoring organizations would submit reimbursement applications to the Department of Human Services on behalf of groups of day care providers. The applications included, among other information, data on the number of children under each provider's care and the number of meals served. The Department of Human Services sent reimbursement checks to the sponsoring organization, which then made payment to the individual providers. The sponsoring organizations were compensated for their assistance.

As the evidence at trial demonstrated, Ms. Cranford falsified much of the information set forth in Child Care Nutrition's application to become a sponsoring organization. More pertinent to the issues on appeal, Ms. Cranford also submitted numerous false claims for reimbursement. She often inflated the number of day care providers that Child Care Nutrition dealt with, and she overstated the number of meals for which reimbursement was due. Child Care Nutrition received inflated administrative expenses, in addition to receiving overpayment for meals, and Ms. Cranford pocketed the excess after paying bona fide providers what they were actually owed.

A federal grand jury in the Western District of Tennessee returned an indictment against Ms. Cranford for 34 counts of mail fraud, 3 counts of making a false statement to the Department of Agriculture, and 22 counts of money laundering. Ms. Cranford was ultimately found guilty on all counts. The district court sentenced her to 110 months in prison, to be followed by a three year term of supervised release. She was further ordered to reimburse the Department of Agriculture $127,434.06. Ms. Cranford now appeals her mail fraud convictions and her sentence.

II.

As to the mail fraud convictions, Ms. Cranford argues for reversal on the ground that the Government presented no direct evidence that the false applications were sent to the Tennessee Department of Human Services by mail. We do not find the argument persuasive.

The government is not required to prove its case by direct evidence. Circumstantial evidence is not only admissible, it may be given the same weight as direct evidence. See, *e.g. United States v. Griffith*, 17 F3d 865, 874-75 (6th Cir. 1994). The fact that the United States did not present direct evidence that Ms. Cranford mailed each of the false claims in question does not affect the validity of the convictions, the government having present sufficient circumstantial evidence that the claims were mailed.

There was evidence that Ms. Cranford reimbursement of postage expenses, for

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example, but submitted no such requests for courier costs. Further, each of the false applications submitted by Ms. Cranford was marked "received" by the Department of Human Services several days after the date indicated on the application, which would be consistent with use of the mails. This evidence, together with evidence that the Department usually received applications through the mail and would have taken notice of claims received in any other manner, was sufficient for a rational jury to conclude that Ms. Cranford transmitted her false claims by mail.

Ms. Cranford also challenges her sentence. Contending that her criminal history category overstated the seriousness of her criminal record, she says that the district court erred in failing to grant her a downward departure from the sentence range prescribed by the sentencing guidelines. Ms. Cranford did not argue this basis for a downward departure before the district court, however, so she has forfeited the right to raise the issue here.

AFFIRMED.